IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 588 of 2006

KAMAL SINGH @ KAMAL KISHORE
V/S
SARASWATI DEVI & ANR.

Mr. J.GEHLOT for Mr. DK PARIHAR, for the appellant / petitioner

Mr. RAKESH SHARMA, for the respondent

Date of Order : 30.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, the learned trial court has dismissed the petitioner's application filed under Order 7 Rule 11, read with O. 7 Rule 10 C.P.C.

It is argued by the learned counsel for the petitioner, that suit is liable to be dismissed under Order 7 Rule 11, being barred by law. Learned counsel for the petitioner was asked as to what material is to be considered for deciding as to whether the suit is to be dismissed under Order 7 Rule 11, and thereupon learned counsel said that the suit should be barred by law. Then, I asked which law bars the suit, and the answer given was that the law is C.P.C. Then, the learned counsel was asked to read the provisions of C.P.C. which bars the suit, and

thereupon learned counsel read the Order 7 Rule 11.

Suffice it to say, that the provisions of Order 7 Rule 11 provides for dismissal of the suit, which, from the averments of the plaint is barred by law.

Then, the learned counsel for the petitioner invited my attention to the documents Ex. 4, 5 and 6 annexed with this writ petition; being certificate of the registration of the shop, with different authorities, power of attorney and Ex. 9, being the application filed by the plaintiff under Order 11 Rule 14, requesting the Court to direct the defendant to produce the power of attorney. Suffice it to say, that it is not the averment that the three documents Ex. 4, 5 and 6 form part of the plaint.

The contention of the learned counsel for the petitioner is, that since the petitioner has denied to be tenant, and has pleaded that the tenant is one Laxmi Narayan Gehlot, and the defendant is only a power of attorney holder, therefore, the suit is barred, and submitted, that a look at Ex. 4, 5, and 6 shows, that the shop is of Laxmi Narayan, and Ex. 6 being the power of attorney in favour of the petitioner.

In my view, this clearly appears to be part of defence, and does not render the suit liable to be

dismissed under Order 7 Rule 11. Then, the learned counsel relied upon the judgment of Hon'ble the Supreme Court, in Deva Sahayam (D) By Lrs. Vs. P.Savithramma & Ors., reported in 2005 DNJ (SC)-823, to contend, that Civil Court has no jurisdiction to decide the relationship of landlord and tenant, where it is denied, and denial of relationship constitute the ground of eviction, and it is required to be considered by the Rent Tribunal. On this basis it was prayed, that exercising powers under O. 7 Rule 10 C.P.C., the suit should be returned for presentation before Rent Tribunal. In my view, it would suffice to say, that prior to the commencement of Rent Control Act, 2001, the suits under the provisions of erstwhile Rent Control Law were triable by respective Civil Court, and that, the Rent Control Act, 2001 has come into force w.e.f. 1.4.2003, while the present suit is filed on 29.1.2003. Then, for the purpose of considering or invoking the provisions of Order 7 Rule 10, the jurisdiction of the Court is to be seen as on the date of presentation of the plaint.

In that view of the matter, it cannot be said that the suit cannot be taken cognizance of by the Civil Court. Thus, considering from any standpoint I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/